

REMARKS/ARGUMENTS

Claims 12, 14-20 and 22 are pending in this application. Claims 1-11, 13, 21, and 23-51 were previously cancelled and claim 20 was previously withdrawn. In this response, Claim 12 is amended and Claim 17 is canceled. Thus, Claims 12, 14-16, 18, 19, and 22 are now pending and believed to be allowable in light of the amendments and arguments presented below.

Claims 52-78 have been added and correspond to the originally-filed but non-elected Claims 23-51 that were previously canceled in response to a restriction requirement. These claims will be subsequently presented in a divisional application under 35 U.S.C. § 121 and entry of Claims 23-51 for this purpose is kindly requested.

Non-elected Claim 20

In referring to acrylic based monomer in non-elected Claim 20, Applicant means a polymer comprising at least one monomer. Applicant requests that the Examiner rejoin withdrawn Claim 20 should Claim 12 be found allowable. Claim 20 was withdrawn pursuant to an election of species requirement. Claims 12 is generic.

Rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103

The Examiner has rejected Claims 12, 14-19, and 22 as being anticipated under 35 U.S.C. § 102(b) over *Valore* (U.S. Pat. No. 4,188,231), *Rirsch* (U.S. Pat. No. 5,106,557), or *Sobolev* (U.S. Pat. No. 6,645,289), and alternatively, rejected the claims under 35 U.S.C. § 103 as being unpatentable over each reference alone, or in combination with *Hayakawa* (U.S. Pat. No. 5,047,086) or *Downing* (U.S. Pat. No. 4,070,199).

Valore

Claim 12 has been amended to provide an upper range of less than 0.2% of a sulphonated dispersion agent ("DA"). *Valore* discloses a functional water reducer in a range greater than the amended upper range and Applicant submits as a result *Valore* does not anticipate this limitation. Applicant respectfully requests that this rejection be reconsidered and withdrawn in light of the amendment of Claim 12.

Applicant respectfully submits that ranges of amended Claim 12 do not overlap those disclosed in *Valore* and are prima facie non-obvious to one of ordinary skill in the art. As the Examiner notes that the secondary references of *Hayakawa* or *Downing* are merely presented for the teaching that aggregate may be added to an extrudable composition and that plasticizer and water reducer are essentially synonymous terms, it is believed that amended Claim 12 is also patentably distinguishable over their combination with *Valore*. As Claims 14-16, 18, 19, and 22 depend from amended Claim 12, it is believed that these claims are also patentably distinguishable.

Rirsch

Claim 12 has been amended to recite a cellulose ether as the viscosity enhancing agent ("VEA") and Claim 17 has been canceled. Applicant respectfully submits that *Rirsch* does not disclose cellulose ethers as viscosity enhancing agents and does not anticipate Claim 12. (It would appear that the Examiner agrees in view of page 8 of the Office Action.) Since *Rirsch* does not teach or suggest the use of cellulose ether VEAs, the Applicant asserts that the claimed invention is novel and non-obvious in view of the document. For the reasons mentioned above, it is also believed that amended Claim 12 is patentably distinguishable over the combination of

Rirsch with Hayakawa or Downing. As Claims 14-16, 18, 19, and 22 depend from amended Claim 12, it is believed that these claims are also patentably distinguishable.

Sobolev

Sobolev provides “complex admixture” formulations in Tables 1 to 5. Table 3 describes an admixture having both a sulphonated DA and a cellulose ether VEA, and this admixture is used in cementitious formulations 3.1.1, 3.1.2, 3.2.1 and 3.2.2. The sulphonated DA in the formulation is the total of “hyperplasticizer” and “modified lignosulfate” that for each formulation is 1.14% (Formulation Nos. 3.1.1 and 3.1.2) or 2.54% (Formulation Nos. 3.2.1 and 3.2.2) and hence greater than the DA range recited in original and amended Claim 12 of “0.05-0.5” and “0.05 to less than 0.2”, respectively. As *Sobolev* does not teach a specific embodiment within Applicant’s claimed range in view of the foregoing, Applicant respectfully submits that *Sobolev* does not anticipate Claim 12. *Atofina v. Great Lakes Chemical Corp.*, 78 U.S.P.Q.2d 1417, 1423-24 (Fed. Cir. 2006) (holding that a genus cannot anticipate a species claim, including overlapping ranges between the claim at issue and the prior art, if the prior art does not disclose a specific embodiment within the claimed range). Further, *Sobolev* does not suggest or teach the claimed invention, specifically that the “dispersion agent is sufficient to increase the efficacy of the viscosity enhancing agent” and thus does not require that the DA increase the efficacy of the VEA during extrusion, as claimed. For the reasons mentioned above, it is believed also that for at least the reasons stated above amended Claim 12 is patentably distinguishable over *Sobolev* alone, or in combination with *Hayakawa* or *Downing*. As Claims 14-16, 18, 19, and 22 depend from amended Claim 12, it is believed that these claims are also patentably distinguishable.

CONCLUSION

Applicant has made a diligent effort to advance the prosecution of this application by amending the claims, canceling claims, and by describing herein how the claims distinguish over the prior art. In light of the amendments and remarks presented above, Applicant submits that Claims 12, 14-16, 18, 19, and 22 are in condition for allowance, and requests favorable consideration and allowance of these claims.

No fees are believed to be due at this time. However, Applicant hereby authorizes the Commissioner to charge any additional fees or refunds that may be required by this paper to Deposit Account 07-0153.

If the Examiner has any questions or comments, or if further clarification is required, the Examiner is urged to contact the undersigned at the telephone number listed below.

Respectfully submitted,
GARDERE WYNNE SEWELL LLP



Scott C. Sample
Registration No. 52,189
Dallas, Texas 75201-4761
(214) 999-4712 – Telephone
(214) 999-3712 – Facsimile

ATTORNEY FOR APPLICANT

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